

2006 LEGISLATIVE UPDATE

LAW ENFORCEMENT

HB 101 Effective October 1, 2006 The Child Protection Act of 2006

West Virginia Code § 15-11-1; 15-11-2; 15-2-15; 15-2C-2; 15-12-2; 15-12-3; 15-12-5; 15-12-6 a; 15-12-8; 15-12-9; 15-12-10; 15-13-1; 15-13-2; 15-13-3; 15-13-4; 15-13-5; 15-13-6; 15-13-7; 15-13-8; 17 B-2-3; 18-5-15 c; 18A-2-14 New Code; 25-1-22; 49-6A-11; 61-8B-3; 61-8B-7; 61-8B-9a; 61-8B-9 b; 62-11D-1; 62-11D-2; 62-11D-3; 62-11E-1; 62-11E-2; 62-11E-3; 62-12-2; 62-12-26; 62-12-27

- (1) Creating a special unit in the State Police specializing in the investigation of child abuse and neglect -- section fifteen, article two, chapter fifteen of this code;
- (2) Modifying the Sex Offender Registration Act to ensure more effective registration, identification and monitoring of persons convicted of sexual offenses -- article twelve, chapter fifteen of this code.
- (3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose information to certain state and local officials -- article thirteen, chapter fifteen of this code;
- (4) Providing for coded driver's licenses and nondriver identification cards to more easily identify sexually violent predators -- section three, article two, chapter seventeen-b of this code;
- (5) Prohibiting contractors and service providers convicted of certain offenses from accessing school grounds and providing for the release of criminal history information by the central abuse registry to county school boards -- section fifteen-c, article five, chapter eighteen of this code;
- (6) Establishing a task force to study the feasibility of constructing separate correctional facilities for the incarceration and treatment of sex offenders -- section twenty-two, article one, chapter twenty-five of this code.
- (7) Requiring the State Police and the Department of Health and Human Resources to maintain statewide child abuse and neglect statistical indexes of all convictions and allegations, respectively -- section fifteen, article two, chapter fifteen and section eleven, article six-a, chapter forty-nine of this code;
- (8) Providing for increased terms of incarceration for first degree sexual assault and first degree sexual abuse committed against children under the age of twelve -- sections three and seven of article eight-b, chapter sixty-one of this code;
- (9) Eliminating eligibility of certain sex offenders for probation, home incarceration and alternative sentences and providing for enhanced terms of incarceration for certain subsequent sex offenses committed by recidivist sex offenders -- sections nine-a and nine-b of article eight-b, chapter sixty-one of this code;
- (10) Providing for polygraph examinations for certain sex offenders on probation, parole or supervised release -- article eleven-d, chapter sixty-two of this code;
- (11) Providing for electronic monitoring of certain sex offenders on probation, parole and supervised release -- article eleven-d, chapter sixty-two of this code;

(12) Establishing a task force to develop measures aimed at managing sexually violent predators released from confinement -- article eleven-e, chapter sixty-two of this code;

(13) Making psychiatric evaluations a condition of probation eligibility for certain sex offenders -- section two, article twelve, chapter sixty-two of this code;

(14) Authorizing the Department of Health and Human Resources to establish qualifications for sex offender treatment programs and counselors -- sections two and twenty-six, article twelve, chapter sixty-two of this code;

(15) Providing for extended supervision of certain offenders and supervised release requirements for sexually violent offenders -- section twenty-six, article twelve, chapter sixty-two of this code; and

(16) Providing for prerelease risk assessments of certain sex offenders -- section twenty-seven, article twelve, chapter sixty-two of this code.

(c) In addition, the Legislature finds that those enhanced terms of incarceration and post-conviction measures provided for in this Act which impact certain offenders convicted of sexual offenses against adults are necessary and appropriate to protect children from neglect and physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage of sexual offenders "cross over" among age groups in selecting their victims; (2) many of the risk factors prevalent among sex offenders that "cross over" (e.g., substance abuse, lack of empathy toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-conviction supervision, monitoring and treatment measures will enable the criminal justice system to identify and address those "cross over" offenders before they can victimize additional children.

§15-2-15. State Police Child Abuse and Neglect Investigations Unit.

(a) The superintendent shall establish a special unit of the State Police, called the Child Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying, investigating and prosecuting criminal child abuse and neglect cases, in coordination with Child Protective Services, established pursuant to section nine, article six-a, chapter forty-nine of this code. The unit shall assist other State Police members with child abuse or neglect investigations as well as the Division of Child Protective Services. The unit may provide training, technical expertise and coordination of services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys and multidisciplinary teams established pursuant to the provisions of section two, article five-d, chapter forty-nine of this code, to identify, investigate, report and prosecute criminal child abuse and criminal child neglect cases. However, nothing in this section may be construed to mean that the unit will assume the duties or investigations of other State Police members or other law-enforcement officers.

(b) The unit will comprise, at a minimum, six members of the State Police. The superintendent shall assign a unit director, and shall assign five members regionally, to be dedicated and trained to assist county Child Protective Services Offices and caseworkers in investigating and coordinating with other law-enforcement personnel, cases of suspected child abuse or neglect. Cases to be investigated include allegations received pursuant to section two, article six-a, chapter forty-nine of this code, and any other credible child abuse or neglect allegations.

(c) The unit director's duties include:

- (1) Overseeing State Police members assigned to the unit;
 - (2) Coordinating activities of the unit with Child Protection Services;
 - (3) Assisting Child Protective Services in developing and refining protocols for improving identification and prosecution of suspected criminal acts of child abuse or neglect; and
 - (4) Assuring that all other directives and responsibilities of the unit are fulfilled.
- (d) The unit shall maintain a statewide statistical index on child abuse and neglect convictions resulting from convictions for violations of sections two, two-a, three, three-a, four and four-a, article eight-d, of chapter sixty-one of this code, to monitor the timely and proper investigation and disposition of child abuse or neglect cases. The statistical data index maintained by the unit shall not contain information of a specific nature that would identify individual cases or persons.
- (e) On or before the thirty-first day of December of each year, the unit director shall submit an annual report to the Joint Committee on Government and Finance. The annual report is to include the statistical index required under the provisions of subsection (d) of this section, and may include recommendations for statutory or program reforms that will assist the unit and further promote the goals of the unit. The report may not contain information of a specific nature that would identify individual cases or persons.
- (f) Every state law-enforcement agency of this state shall periodically provide statistical information regarding child abuse and neglect cases investigated and prosecuted by that law-enforcement agency to the unit.
- (g) The superintendent may propose rules for legislative approval or procedural rules as necessary to effectuate the provisions of this section in accordance with the provisions of article three, chapter twenty-nine-a of this code. The superintendent shall provide forms to law-enforcement agencies, circuit clerks and parole officers to facilitate submission of appropriate information necessary to prepare the statistical reports required by this section.
- (h) There is hereby established a special account in the State Treasury, into which shall be deposited any gifts, grants or donations made to the unit, and any other funds directed to be deposited into the account by appropriation of the Legislature, and to be expended for the purposes of this section pursuant to appropriation of the Legislature.

§15-2C-2. Central Abuse Registry; required information; procedures.

- (a) The Criminal Identification Bureau of the West Virginia State Police shall establish a Central Abuse Registry, to contain information relating to criminal convictions involving child abuse or neglect, abuse or neglect of an incapacitated adult or an adult receiving behavioral health services and misappropriation of property by individuals specified in subsection (b) of this section and information relating to individuals required to be registered as a sex offender.
- (b) The Central Abuse Registry shall contain, at a minimum, information relating to: Convictions of a misdemeanor or a felony involving abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual's employment or contract to provide services, in a residential care facility, in a licensed day care center in connection with providing behavioral health services, or in connection with the provision of home care services; information relating to individuals convicted of specific offenses enumerated in subsection (a), section three of

this article with respect to a child or an incapacitated adult or an adult receiving behavioral health services; information relating to all individuals required to register with the Child Abuse and Neglect Registry established pursuant to article thirteen, chapter fifteen of this code; and information relating to all individuals required to register with the West Virginia State Police as sex offenders pursuant to the provisions of article twelve, chapter fifteen of this code. The Central Abuse Registry shall contain the following information:

- (1) The individual's full name;
 - (2) Sufficient information to identify the individual, including date of birth, social security number and fingerprints if available;
 - (3) Identification of the criminal offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services;
 - (4) For cases involving abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a day care center, or of a child or an incapacitated adult or an adult receiving behavioral health services receiving home care services, sufficient information to identify the location where the documentation of any investigation by the Department of Health and Human Resources is on file and the location of pertinent court files; and
 - (5) Any statement by the individual disputing the conviction, if he or she chooses to make and file one.
- (c) Upon conviction in the criminal courts of this state of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult or an adult receiving behavioral health services, the individual so convicted shall be placed on the Central Abuse Registry.

§15-12-2. Registration.

- (a) The provisions of this article apply both retroactively and prospectively.
- (b) Any person who has been convicted of an offense or an attempted offense or has been found not guilty by reason of mental illness, mental retardation or addiction of an offense under any of the following provisions of chapter sixty-one of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in subsection (d) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter:
- (1) Article eight-b, including the provisions of former section six of said article, relating to the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during the year two thousand legislative session;
 - (2) Article eight-c;
 - (3) Sections five and six, article eight-d;
 - (4) Section fourteen, article two;
 - (5) Sections six, seven, twelve and thirteen, article eight; or
 - (6) Section fourteen-b, article three-c, as it relates to violations of those provisions of chapter sixty-one listed in this subsection.
- (c) Any person who has been convicted of a criminal offense and the sentencing judge

made a written finding that the offense was sexually motivated shall also register as set forth in this article.

(d) Persons required to register under the provisions of this article shall register in person at the West Virginia State Police detachment in the county of his or her residence, the county in which he or she owns or leases habitable real property that he or she visits regularly, the county of his or her place of employment or occupation and the county in which he or she attends school or a training facility, and in doing so, provide or cooperate in providing, at a minimum, the following when registering:

- (1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;
- (2) The address where the registrant intends to reside or resides at the time of registration, the address of any habitable real property owned or leased by the registrant that he or she regularly visits: *Provided*, That a post office box may not be provided in lieu of a physical residential address, the name and address of the registrant's employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;
- (3) The registrant's social security number;
- (4) A full-face photograph of the registrant at the time of registration;
- (5) A brief description of the crime or crimes for which the registrant was convicted;
- (6) Fingerprints;
- (7) Information related to any motor vehicle, trailer or motor home owned or regularly operated by a registrant, including vehicle make, model, color and license plate number: *Provided*, That for the purposes of this article, the term "trailer" shall mean travel trailer, fold-down camping trailer and house trailer as those terms are defined in section one, article one, chapter seventeen-a of this code;
- (8) Information relating to any Internet accounts the registrant has and the screen names, user names or aliases the registrant uses on the internet; and
- (9) Information related to any telephone or electronic paging device numbers that the registrant has or uses, including, but not limited to, residential, work and mobile telephone numbers.

(e) (1) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section, hereinafter referred to as a "qualifying offense", including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, regional jail administrator, city official or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information required by subsection (d) of this section prior to the release of the person, inform the person of his or her duty to register and send written notice of the release of the person to the State Police within three business days of receiving the information. The notice must include the information required by said subsection. Any person having a duty to register for a qualifying offense shall register

upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer or other change in disposition status.

(2) Notwithstanding any provision of this article to the contrary, a court of this state shall, upon presiding over a criminal matter resulting in conviction or a finding of not guilty by reason of mental illness, mental retardation or addiction of a qualifying offense, cause, within seventy-two hours of entry of the commitment or sentencing order, the transmittal to the sex offender registry for inclusion in the registry all information required for registration by a registrant as well as the following non-identifying information regarding the victim or victims:

(A) His or her sex;

(B) His or her age at the time of the offense; and

(C) The relationship between the victim and the perpetrator.

The provisions of this paragraph do not relieve a person required to register pursuant to this section from complying with any provision of this article.

(f) For any person determined to be a sexually violent predator, the notice required by subsection (d) of this section must also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and

(3) Documentation of any treatment received for the mental abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of this section, the person shall sign in open court a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(h) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article. The information required to be made public by the State Police by subdivision (2), subsection (b), section five of this article is to be accessible through the Internet. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released through the Internet.

(i) For the purpose of this article, "sexually violent offense" means:

(1) Sexual assault in the first degree as set forth in section three, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter

sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(3) Sexual assault of a spouse as set forth in the former provisions of section six, article eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the two thousand legislative session, or of a similar provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction.

(j) For purposes of this article, the term "sexually motivated" means that one of the purposes for which a person committed the crime was for any person's sexual gratification.

(k) For purposes of this article, the term "sexually violent predator" means a person who has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term "mental abnormality" means a congenital or acquired condition of a person, that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(m) For purposes of this article, the term "predatory act" means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(n) For the purposes of this article, the term "business days", means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.

§15-12-3. Change in registry information.

When any person required to register under this article changes his or her residence, address, place of employment or occupation, motor vehicle, trailer or motor home information required by section two of this article, or school or training facility which he or she is attending, or when any of the other information required by this article changes, he or she shall, within ten business days, inform the West Virginia State Police of the changes in the manner prescribed by the Superintendent of State Police in procedural rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: *Provided*, That when any person required to register under this article changes his or her residence, place of employment or occupation or school or training facility he or she is attending from one county of this state to another county of this state, he or she shall inform the West Virginia State Police detachment in both counties within ten business days of the change in the manner prescribed by the superintendent in procedural rules promulgated in accordance with the provisions of article three, chapter twenty- nine-a of this code.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and State Police; petition to circuit court.

(a) Within five business days after receiving any notification as described in this article, the State Police shall distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(2) The county superintendent of schools in each county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(3) The child protective services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(4) All community organizations or religious organizations which regularly provide services to youths in the county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(5) Individuals and organizations which provide day care services for youths or day care, residential or respite care, or other supportive services for mentally or physically incapacitated or infirm persons in the county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility; and

(6) The Federal Bureau of Investigation (FBI).

(b) Information concerning persons whose names are contained in the sex offender registry is not subject to the requirements of the West Virginia Freedom of Information Act, as set forth in chapter twenty-nine-b of this code, and may be disclosed and disseminated only as otherwise provided in this article and as follows:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the State Police shall notify the prosecuting attorney of the county in which the person resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. The prosecuting attorney shall cooperate with the State Police in conducting a community notification program which is to include publication of the offender's name, photograph, place of residence, location of regularly visited habitable real property owned or leased by the offender, county of employment and place at which the offender attends school or a training facility, as well as information concerning the legal rights and obligations of both the offender and the community. Information relating to the victim of an offense requiring registration may not be released to the public except to the extent the prosecuting attorney and the State Police consider it necessary to best educate the public as to the nature of sexual offenses: *Provided*, That no victim's name may be released in any public notification pursuant to this subsection. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released to the public with this notification program. The prosecuting attorney and State Police may conduct a community notification program in the county where a person who is required to register

for life under the terms of subdivision (2), subsection (a), section four of this article resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. Community notification may be repeated when determined to be appropriate by the prosecuting attorney;

(2) The State Police shall maintain and make available to the public at least quarterly the list of all persons who are required to register for life according to the terms of subdivision (2), subsection (a), section four of this article. No information concerning the identity of a victim of an offense requiring registration or telephone or electronic paging device numbers a registrant has or uses may be released with this list. The method of publication and access to this list are to be determined by the superintendent; and

(3) A resident of a county may petition the circuit court for an order requiring the State Police to release information about persons that reside or own or lease habitable real property that the persons regularly visit in that county and who are required to register under section two of this article. The court shall determine whether information contained on the list is relevant to public safety and whether its relevance outweighs the importance of confidentiality. If the court orders information to be released, it may further order limitations upon secondary dissemination by the resident seeking the information. In no event may information concerning the identity of a victim of an offense requiring registration or information relating to telephone or electronic paging device numbers a registrant has or uses be released.

(c) The State Police may furnish information and documentation required in connection with the registration to authorized law-enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the records will be used solely for law-enforcement- related purposes. The State Police may disclose information collected under this article to federal, state and local governmental agencies responsible for conducting preemployment checks. The State Police also may disclose information collected under this article to the Division of Motor Vehicles pursuant to the provisions of section three, article two, chapter seventeen-b of this code.

(d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

§15-12-6a. Release of information to the Sex Offender Registry. Upon the request of the West Virginia State Police, agencies in possession of records produced in conjunction with investigation, prosecution, adjudication, incarceration, probation, parole or presentence review of a sex offender and any other records produced in conjunction with a sex offense shall provide those records to the State Police.

§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.

(a) Each time a person has a change in any of the registration information as required by this article and knowingly fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense under this section.

(b) Except as provided in this section, any person required to register for ten years pursuant to subdivision (1), subsection (a), section four of this article who knowingly provides materially false information or who refuses to provide accurate information when so required by the terms of this article, or who knowingly fails to register or knowingly fails to provide a change in any required information as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or confined in jail not more than one year, or both. Any person convicted of a second offense under this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years. Any person convicted of a third or subsequent offense under this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than twenty-five years.

(c) Any person required to register for life pursuant to this article who knowingly provides materially false information or who refuses to provide accurate information when so required by the terms of this article, or who knowingly fails to register or knowingly fails to provide a change in any required information as required by this article, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years. Any person convicted of a second or subsequent offense under this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than ten nor more than twenty-five years.

(d) In addition to any other penalty specified for failure to register under this article, any person under the supervision of a probation officer, parole officer or any other sanction short of confinement in jail or prison who knowingly refuses to register or who knowingly fails to provide a change in information as required by this article shall be subject to immediate revocation of probation or parole and returned to confinement for the remainder of any suspended or unserved portion of his or her original sentence.

(e) Notwithstanding the provisions of subsection (c) of this section, any person required to register as a sexually violent predator pursuant to this article who knowingly provides materially false information or who refuses to provide accurate information when so required by terms of this article or who knowingly fails to register or knowingly fails to provide a change in any required information as required by this article is guilty of a felony and, upon conviction thereof, shall, for a first offense, be confined in a state correctional facility not less than two nor more than ten years and for a second or subsequent offense, is guilty of a felony and shall be confined in a state correctional facility not less than fifteen nor more than thirty-five years.

(f) Any person who knows or who has reason to know that a sex offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sex offender in eluding a law-enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, his or her noncompliance with the requirements of this section:

(1) Withholds information from, the law-enforcement agency about the sex offender's noncompliance with the requirements of this section and, if known, the whereabouts of the sex offender; or

(2) Harbors, or attempts to harbor, or assists another person in harboring or attempting to

harbor, the sex offender; or

(3) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sex offender; or

(4) Provides information to the law-enforcement agency regarding the sex offender which the person knows to be false information is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or confined in jail not more than one year, or both: *Provided*, That where the person assists or seeks to assist a sex offender whose violation of this section would constitute a felony, the person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years.

§15-12-9. Registration of out-of-state offenders.

(a) When any probation or parole officer accepts supervision of and has legal authority over any person required to register under this article from another state under the terms and conditions of the uniform act for out-of-state parolee supervision established under article six, chapter twenty-eight of this code, the officer shall give the person written notice of the registration requirements of this section and obtain a signed statement from the person required to register acknowledging the receipt of the notice. The officer shall obtain and submit to the State Police the information required in subsection (d), section two of this article.

(b) Any person:

(1) Who resides in another state or federal or military jurisdiction;

(2) Who is employed, carries on a vocation, is a student in this state, is a visitor to this state for a period of more than fifteen continuous days or owns or leases habitable real property in this state that he or she regularly visits; and

(3) Who is required by the state, federal or military jurisdiction in which he or she resides to register in that state, federal or military jurisdiction as a sex offender, or has been convicted of a violation in that state, federal or military jurisdiction that is similar to a violation in this article requiring registration as a sex offender in this state, shall register in this state and otherwise comply with the provisions of this article.

(c) Any person changing residence to this state from another state or federal or military jurisdiction who is required to register as a sex offender under the laws of that state or federal or military jurisdiction shall register as a sex offender in this state.

§15-12-10. Address verification.

All registrants, including those for whom there has been no change in registration information since their initial registration or previous address verification, must report, in the month of their birth, or in the case of a sexually violent predator in the months of January, April, July and October, to the State Police detachment in their county or counties of registration and must respond to all verification inquiries or requests made by the State Police pursuant to this section. The State Police shall verify addresses of those persons registered as sexually violent predators every ninety days and all other registered persons once a year. The State Police may require registrants to periodically submit to new fingerprints and photographs as part of the verification process. The method of verification shall be in accordance with internal management rules pertaining thereto

promulgated by the superintendent under authority of section twenty-five, article two, chapter fifteen of this code.

§15-13-1. Intent and findings.

- (a) It is the intent of this article to assist law-enforcement agencies' efforts to protect children from abuse and neglect by requiring persons convicted of child abuse or neglect to register with the State Police detachment in the county of his or her residence and to report information as required by section two of this article. It is not the intent of the Legislature that this act be used to inflict retribution or additional punishment on any person convicted of any offense requiring registration under this article. This article is intended to be regulatory in nature and not penal, and is intended to provide for the safety of children who are exposed to persons convicted of child abuse and neglect.
- (b) The Legislature finds and declares that there is a compelling and necessary public interest that children be protected from physical abuse and neglect, and that requirements of this article are appropriate and reasonable because of this compelling state interest.
- (c) The Legislature also finds and declares that persons required to register for committing child abuse or neglect pursuant to this article have a reduced expectation of privacy because of the state's interest in public safety.

§15-13-2. Registration.

- (a) The provisions of this article apply both retroactively and prospectively.
- (b) Any person who has been convicted of an offense or has been found not guilty solely by reason of mental illness, mental retardation or addiction of an offense under any of the provisions of sections two, two-a, three, three-a, four and four-a, article eight-d, of chapter sixty-one of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in subsection (e) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter.
- (c) The clerk of the court in which a person is convicted for an offense described in subsection (b) of this section, or for an offense described in a municipal ordinance which has the same elements as an offense described in said section, shall forward to the superintendent, at a minimum, information required on forms provided by the State Police relating to the person required to register.
 - (1) If the conviction is the judgment of a magistrate court, mayor, police court judge or municipal court judge, the clerk or recorder shall forward to the superintendent, at a minimum, information required on forms provided by the State Police relating to the person required to register when the person convicted has not requested an appeal within thirty days of the sentencing for such conviction.
 - (2) If the conviction is the judgment of a circuit court, the circuit clerk shall submit, at a minimum, the required information to the superintendent regarding the person convicted within thirty days after the judgment was entered.
- (d) If a person has been convicted of any criminal offense against a child in his or her household or of whom he or she has custodial responsibility, and the sentencing judge makes a written finding that there is a continued likelihood that the person will continue to have regular contact with that child or other children and that as such it is in the best

interest of the child or children for that person to be monitored, then that person is subject to the reporting requirements of this article.

(e) In addition to any other requirements of this article, persons required to register under the provisions of this article shall provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the name and address of the registrant's employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend: *Provided*, That a post office box or other address that does not have a physical street address of residence may not be provided in lieu of a physical residence address;

(3) The registrant's social security number;

(4) Ages and names of any children in the household of the registrant, and any children currently living or subsequently born to the registrant.

(5) A brief description of the offense or offenses for which the registrant was convicted; and

(6) A complete set of the registrant's fingerprints.

(f) On the date that any person convicted or found not guilty solely by reason of mental illness, mental retardation or addiction of any of the offenses listed in subsection (b) of this section, hereinafter referred to as a "qualifying offense", including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, Regional Jail Administrator, city or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person, and any parole or probation officer who releases the person or supervises the person following the release, shall inform the person of his or her duty to register and send written notice of the release to the superintendent within three business days of release, and provide any other information as directed by rule of the State Police. The notice must include, at a minimum, the information required by subsection (e) of this section.

(g) Any person having a duty to register for a qualifying offense shall register upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer or other change in disposition status.

(h) At the time the person is convicted or found not guilty solely by reason of mental illness, mental retardation or addiction in a court of this state of the offenses set forth in subsection (b) of this section, the person shall sign in open court a notification statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed,

constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(i) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article.

(j) The superintendent shall provide forms to law-enforcement agencies, circuit clerks and parole officers to facilitate submission of appropriate information necessary to administer the child abuse and neglect registry established by this article.

(k) For the purposes of this article, the term "business days", means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.

§15-13-3. Change in registry information.

(a) When any person required to register under this article changes his or her residence, address, or when any of the other information required by this article changes, he or she shall, within ten business days, inform the West Virginia State Police of the changes in the manner prescribed by the Superintendent of State Police in procedural rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

Upon directive by the State Police, any person required to register under this article may be required to appear at the nearest State Police detachment from his or her residence, to verify or provide additional information or documentation necessary to have complete and accurate registry records.

(b) A person who is required to register pursuant to the provisions of this article, who intends to move to another state or country shall, prior to such move, notify the State Police of his or her intent to move and of the location to which he or she intends to move, or if that person is incarcerated he or she shall notify correctional officials of his or her intent to reside in some other state or country upon his or her release, and of the location to which he or she intends to move. Upon such notification, the State Police shall notify law-enforcement officials of the jurisdiction where the person indicates he or she intends to reside of the information provided by the person under the provisions of this article.

§15-13-4. Duration.

(a) A person required to register pursuant to the provisions of this article shall continue to comply with this section, except during ensuing periods of incarceration or confinement, until ten years have elapsed since the person was released from prison, jail or a mental health facility or ten years have elapsed since the person was placed on probation, parole or supervised or conditional release. The ten-year registration period shall not be reduced by the offender's release from probation, parole or supervised or conditional release.

(b) A person whose conviction is overturned for the offense which required them to register under this article shall, upon petition to the court, have their name removed from the registry.

§15-13-5. Distribution and disclosure of information.

- (a) Within five business days after receiving any notification as described in this article, the State Police shall transmit a copy of the notification statement to the Department of Health and Human Resources as provided in section two of this article.
- (b) Within five business days after receiving any notification statement pursuant to the provisions of subsection (a) of this section, the Secretary of the Department of Health and Human Resources shall distribute a copy of the notification statement to:
 - (1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, is employed or attends school or a training facility;
 - (2) The county superintendent of schools where the registrant resides, is employed or attends school or a training facility; and
 - (3) The Child Protective Services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, is employed or attends school or a training facility.
- (c) The State Police may furnish information and documentation required in connection with the registration to authorized law enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the records will be used solely for law-enforcement-related purposes. The State Police may disclose information collected under this article to federal, state and local governmental agencies responsible for conducting preemployment checks.
- (d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.
- (e) The information contained in the child abuse and neglect registry is confidential, and may not be disclosed except as specifically provided in this article. The information contained in the registry with respect to an individual shall be provided to that individual promptly upon request. Individuals on the registry requesting registry information shall be afforded the opportunity to file statements correcting any misstatements or inaccuracies contained in the registry. The State Police and the Department of Health and Human Resources may disclose registry information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign states and of the State of West Virginia upon proper request stating that the information requested is necessary in the interest of and will be used solely in the administration of official duties and the criminal laws. Agreements with other states providing for the reciprocal sharing of abuse and neglect registry information are specifically authorized. Nothing in this article would preclude disclosure of information authorized pursuant to article two-c of this chapter.
- (f) An active file on requests for information by requesters shall be maintained by the State Police and the Department of Health and Human Resources for a period of one year from the date of a request.
- (g) Information on the registry shall be exempt from disclosure under the freedom of information act in article one, chapter twenty-nine-b of this code.

§15-13-6. Duties of institution officials.

In addition to the duties imposed by sections two and four of this article, the official in charge of the place of confinement of any person required to register under this article shall, before the person is paroled or released, inform that person of his or her duty to register. Further, the official shall obtain the full address of the person and a statement signed by the person acknowledging that the person has been informed of his or her duty to register.

§15-13-7. Failure to register or provide notice of registration changes; penalty.

(a) Except as provided in this section, any person required to register under this article who knowingly provides false information or who refuses to provide accurate information when so required by this article, or who knowingly fails to register or knowingly fails to provide a change in any information as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or imprisoned in jail not more than one year, or both: *Provided*, That each time the person has a change in any of the registration information as required by this article and fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense.

(b) Any person required to register under this article who is convicted of a second or subsequent offense of failing to register or provide a change in any information as required by this article who knowingly provides false information or who refuses to provide accurate information when so required by terms of this article or who knowingly fails to register or knowingly fails to provide a change in information as required by this article is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years.

(c) In addition to any other penalty specified for failure to register under this article, any person under the supervision of a probation officer, parole officer or any other sanction short of confinement in jail or prison who knowingly refuses to register or who knowingly fails to provide a change in information as required by this article shall be subject to immediate revocation of probation or parole and returned to confinement for the remainder of any suspended or unserved portion of his or her original sentence.

§15-13-8. Registration of out-of-state offenders.

(a) When any probation or parole officer accepts supervision of, and has legal authority over, any person required to register under this article from another state under the terms and conditions of the Interstate Compact for the Supervision of Adult Offenders established under article seven, chapter twenty-eight of this code, the officer shall give the person written notice of the registration requirements of this section and obtain a signed statement from the person required to register acknowledging the receipt of the notice. The officer shall obtain and submit to the State Police the information required in subsection (e), section two of this article.

(b) Any person:

(1) Who resides in another state or federal or military jurisdiction;

(2) Who is employed, carries on a vocation, is a student in this state or is a visitor to this state for a period of more than fifteen continuous days; and

(3) Who is required by the state, federal or military jurisdiction in which he or she resides to register in that state, federal or military jurisdiction for child abuse or neglect, or has been convicted of a violation in that state, federal or military jurisdiction that is similar to a violation in this article shall register in this state and otherwise comply with the provisions of this article.

(c) Any person changing residence to this state from another state or federal or military jurisdiction who is required to register because of a conviction for child abuse or neglect under the laws of that state or federal or military jurisdiction shall register in this state.

§17B-2-3. What persons may not be licensed; exceptions.

(a) The division may not issue any license hereunder:

(1) To any person who is under the age of eighteen years: *Provided*, That the division may issue a junior driver's license on or after the first day of January, two thousand one, a graduated driver's license, to a person under the age of eighteen years in accordance with the provisions of section three-a of this article;

(2) To any person, as a Class A, B, C or D driver, who is under the age of eighteen years;

(3) To any person, whose license has been suspended or revoked, during the suspension or revocation;

(4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

(5) To any person, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon the certificate of the superintendent of the institution that the person is competent, and not then unless the commissioner is satisfied that the person is competent to operate a motor vehicle with a sufficient degree of care for the safety of persons or property;

(6) To any person who is required by this chapter to take an examination, unless the person has successfully passed the examination;

(7) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare.

(b) The division may not issue a license or nondriver identification card to any person required to register as a sexually violent predator pursuant to the provisions of article twelve, chapter fifteen, unless he or she obtains a driver's license or nondriver identification card coded by the commissioner to denote that he or she is a sexually violent predator as follows:

(1) If a person is judicially determined to be a sexually violent predator after the effective date of this section, the sentencing court shall order the person or the agency with custody of the person's driver's license or nondriver identification card to surrender said license or card to the court. The sentencing court shall forward to the division all driver's licenses or nondriver identification cards that it receives pursuant to this section, along with a copy of the sentencing order. If a person is registered as a sexually violent predator pursuant to section nine, article twelve, chapter fifteen of this code after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, the person shall surrender their driver's license or nondriver identification card to the division within ten days of their registration with the State Police. Any replacement driver's license or nondriver identification card issued to

the person under this section must be coded by the commissioner to denote the person is a sexually violent predator and shall be issued at no cost to the person.

(2) Within ten business days of the effective date of the amendments to this section made during the first extraordinary session of the Legislature, two thousand six, the State Police shall provide the division with the name, address and motor vehicle information of every person registered as a sexually violent predator in the state at that time and also provide notice to said registrants of the requirements set forth in said amendments. If a person is registered as a sexually violent predator prior to the effective date of this section, as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, he or she shall surrender his or her driver's license or nondriver identification card to the division within ten business days of his or her receipt of the notice from the State Police required by said amendments. Any replacement driver's license or nondriver identification card issued to the person under this section must be coded by the commissioner to denote the person is a sexually violent predator and shall be issued at no cost to the person.

(c) Upon receipt of a driver's license or nondriver identification card from a sentencing court or individual pursuant to subsection (b) of this section, the division shall cancel said license or card and note the cancellation in its records system so as to prevent the issuance of a replacement or duplicate license or card lacking the coded notation required by subsection (b) of this section.

(d) Upon showing proof that a person is no longer required to register as a sexually violent predator, the division shall, at no charge, issue a driver's license or nondriver identification card without the coded notation printed upon the license. No person issued a driver's license or nondriver identification card pursuant to the amendments to this section made during the first extraordinary session of the Legislature, two thousand six, may alter or deface the license or card to obscure the special marking identifying the holder as a sexually violent predator.

(e) Any person failing to comply with the provisions of subsections (b), (c) or (d) is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or confined in jail not more than one year, or both fined and imprisoned.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

(a) In recognition of the findings of the Legislature as set forth in section one, article six-c, chapter forty-nine of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family environment and reducing the general vulnerability of children. (b) County boards of education shall be required, to the extent funds are provided, to establish programs for the prevention of child abuse and neglect and child assault. Such programs shall be provided to pupils, parents and school personnel as deemed appropriate. Such programs shall be in compliance with regulations to be developed by the State Board of Education with the advice and assistance of the state

Department of Health and Human Resources and the West Virginia State Police:
Provided, That any such programs which substantially comply with the regulations adopted by the board and were in effect prior to the adoption of the regulations may be continued. (c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated to the county boards of education from the children's trust fund established pursuant to the provisions of article six-c, chapter forty-nine of this code or appropriated for such purpose by the Legislature.

(d) County boards of education shall request from the State Criminal Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses or possession of controlled substances with intent to deliver same for all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

(e) Contractors or service providers or their employees may not make direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense, as defined in section two, article twelve, chapter fifteen of this code. For the purposes of this section, contractor and service provider shall be limited to any vendor, individual or entity under contract with a county school board. County school boards may require contractors and service providers to verify the criminal records of their employees before granting the above-mentioned contact or access. Where prior written consent is obtained, county school boards may obtain information from the Central Abuse Registry regarding contractors, service providers and their employees for the purposes of this subsection. Where a contractor or service provider gives his or her prior written consent, the county school board also may share information provided by the Central Abuse Registry with other county school boards for the purposes of satisfying the requirements of this subsection. The requirements of this subsection shall not go into effect until the first day of July, two thousand seven.

§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.

(a) There is hereby created a Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders.

(b) The task force consists of the following members:

(1) The Secretary of the Department of Military Affairs and Public Safety, or his or her designee;

(2) The Commissioner of the Division of Corrections, or his or her designee;

(3) The Secretary of the Department of Health and Human Resources, or his or her designee;

(4) The Commissioner of the Bureau for Behavioral Health and Health Facilities, or his or her designee; and

(5) The Director of the Division of Criminal Justice Services, or his or her designee.

(c) The task force shall designate the chair of the task force.

(d) The Legislature directs the task force to:

(1) Study whether sex offenders can be treated and rehabilitated;

(2) Study the feasibility and cost effectiveness of operating a separate correctional facility

for the incarceration and treatment of sex offenders;

(3) Study the findings and recommendations from relevant national advisory committees, federal agencies, and peer-reviewed medical, correctional, and legal literature; and

(4) Identify and recommend alternatives to establishing a separate facility, if a separate facility is not feasible and cost effective.

(e) The task force may conduct inquiries and hold hearings in furtherance of its objectives and in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment.

(f) All actual and necessary travel expenses of the members of the task force shall be reimbursed by the member's employing agency. All other expenses incurred by the task force shall be paid by the Division of Corrections.

(g) The task force shall make its final report to the Governor and the Legislature regarding its findings and recommendations not later than the first day of July, two thousand seven.

§49-6A-11. Statistical reports.

The Department of Health and Human Resources shall maintain a statewide child abuse and neglect statistical index of all substantiated allegations of child abuse or neglect cases to include information contained in the reports required under this article and any other information considered appropriate by the Secretary of the Department of Health and Human Resources. Nothing in the statistical data index maintained by the Department of Health and Human Resources may contain information of a specific nature that would identify individual cases or persons. Notwithstanding the provisions of section one, article seven, chapter forty-nine of this code, the Department of Health and Human Resources shall provide copies of the statistical data maintained pursuant to this subsection to the State Police child abuse and neglect investigations unit to carry out its responsibilities to protect children from abuse and neglect.

§61-8B-3. Sexual assault in the first degree.

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or

(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred

years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.

§61-8B-7. Sexual abuse in the first degree.

(a) A person is guilty of sexual abuse in the first degree when:

(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or

(2) Such person subjects another person to sexual contact who is physically helpless; or

(3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment for not less than five nor more than twenty-five years and fined not less than one thousand dollars nor more than five thousand dollars.

§61-8B-9a. Mandatory sentence for person committing certain sex offenses against children.

(a) Notwithstanding the provisions of section one-a, article eleven-a, section four, article eleven-b and section two, article twelve of chapter sixty-two of this code, a person shall not be eligible for probation, home incarceration or an alternative sentence provided under this code if they are convicted of an offense under section three, four, five, seven, eight or nine, article eight-b, chapter sixty-one of this code, are eighteen years of age or older, the victim is younger than twelve years of age and the finder of fact determines that one of the following aggravating circumstances exists:

(1) The person employed forcible compulsion in commission of the offense;

(2) The offense constituted, resulted from or involved a predatory act as defined in subsection (m), section two, article twelve, chapter fifteen of this code;

(3) The person was armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the victim to submit; or

(4) The person removed the victim from one place to another and did not release the victim in a safe place. For the purposes of this section, "release the victim in a safe place" means release of a victim in a place and manner which realistically conveys to the victim that he or she is free from captivity in circumstances and surroundings wherein aid is readily available.

(b)(1) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the existence of an aggravating circumstance shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose;

or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) Insofar as the provisions of this section relate to mandatory sentences without probation, home incarceration or alternative sentences, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.

(a) Notwithstanding any provision of this article to the contrary, any person who has been convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, against a victim under the age of twelve years old and thereafter commits and thereafter is convicted of one of the following offenses shall be subject to the following penalties unless another provision of this code authorizes a longer sentence:

(1) For a violation of section three of this article, the penalty shall be imprisonment in a state correctional facility for not less than fifty nor more than one hundred fifty years;

(2) For a violation of section four of this article, the penalty shall be imprisonment in a state correctional facility for not less than thirty nor more than one hundred years;

(3) For a violation of section five of this article, the penalty shall be imprisonment in a state correctional facility for not less than five nor more than twenty-five years;

(4) For a violation of section seven of this article, the penalty shall be imprisonment in a state correctional facility for not less than ten nor more than thirty-five years; and

(5) Notwithstanding the penalty provisions of section eight of this article, a violation of its provisions by a person previously convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, shall be a felony and the penalty therefor shall be imprisonment in a state correctional facility for not less than three nor more than fifteen years.

(b) Notwithstanding the provisions of section two, article twelve, chapter sixty-two of this code, any person sentenced pursuant to this section shall not be eligible for probation.

(c) Notwithstanding the provisions of section one-a, article eleven-a and section four, article eleven-b of chapter sixty-two of this code, a person sentenced under this section shall not be eligible for home incarceration or an alternative sentence.

§62-11D-1. Definitions.

As used in this article:

(1) "Certified polygraph analyst" means a person licensed pursuant to the provisions of section five-c, article five, chapter twenty-one of this code and who:

(A) Is certified in post conviction sex offender testing as prescribed by the American Polygraph Association;

(B) Has completed not less than twenty hours of American Polygraph Association-approved sex offender testing training every other calendar year; and

(C) Uses standards approved by the American Polygraph Association for sex offender testing.

(2) "Electronic monitoring" means any one or a combination of the following technologies:

(A) Voice verification;

(B) Radio frequency;

- (C) Video display/breath alcohol test;
- (D) Global positioning satellite; or
- (E) Global positioning satellite - cellular.
- (3) "Full-disclosure polygraph" or "sexual history polygraph" means a polygraph examination administered to determine the entire sexual history of the probationer or parolee.
- (4) "Maintenance test" means polygraph examination administered to determine the probationer's or parolee's compliance with the terms of supervision and treatment.
- (5) "Sexually violent predator" means any person determined by a circuit court of this state to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code or of a similar provision in another state, federal or military jurisdiction.

§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.

- (a) Notwithstanding any provision of this code to the contrary, any person:
 - (1) Who has been determined to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code; or
 - (2) Who is required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code and who is ordered by a circuit court or supervising entity to undergo polygraph examination as a condition of probation, parole or supervised release, shall, as a condition of said probation, parole or supervised release, submit to polygraph examinations as prescribed in this section.
- (b) Any person required to undergo polygraph examination pursuant to subsection (a) of this section shall, at his or her expense, submit to at least one polygraph examination each year to answer questions relating to his or her compliance with conditions of supervision, including conditions related to treatment. Additional examinations may be required, not to exceed a total of five. The results of any examination are not admissible in evidence and are to be used solely as a risk assessment and treatment tool. Examination results shall be made available to the person under supervision, upon request.
- (c) In the event a person required to submit to polygraph examinations as required by the provisions of this section is unable to pay for the polygraph examination or examinations, that person may present an affidavit reflecting the inability to pay for such testing to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such testing, the court shall issue an order reflecting such findings and forward such order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for such testing.
- (d) Any polygraph examination conducted pursuant to the provisions of this section shall be conducted by a certified polygraph analyst.
- (e) In the conduct of polygraph examinations of a sex offender performed pursuant to the provisions of this section, no certified polygraph analyst may:
 - (1) Conduct more than two full disclosure or sexual history polygraph examinations in a twenty-four hour period;
 - (2) Disclose any information gained during any full disclosure or sexual history polygraph examination to any law-enforcement agency or other party, other than the

supervising entity, without the supervised person's consent, nor shall any information or disclosure be admissible in any court of this state, unless such information disclosed indicates the intention or plan to commit a criminal violation of the laws of this or another state or of the United States in which case such information may be released only to such persons as might be necessary solely to prevent the commission of such crime;

(3) Conduct more than two maintenance tests in a twenty-four hour period;

(4) Conduct more than one full disclosure or sexual history polygraph examination and more than two maintenance tests in a twenty-four hour period; or

(5) Conduct more than five polygraph examinations of the same sex offender in a calendar year.

(f) No polygraph examination performed pursuant to the provisions this section may be conducted by a person who is a sworn peace officer, within the boundaries of that officer's jurisdiction.

§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.

(a) Notwithstanding any provisions of this code to the contrary, any person designated as a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code who is on probation, parole or supervised release, shall be subject to electronic monitoring as a condition of probation, parole or supervised release. A person required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code may, as a condition of probation, parole or supervised release, be subject to electronic monitoring.

(b) Upon being placed on supervision, a person required to undergo electronic monitoring pursuant to the provisions of this section shall be placed at a minimum on radio frequency monitoring with curfews enforced. Following an assessment designed to determine the level and type of electronic monitoring necessary to effectuate the protection of the public, a supervised person may be placed on a system providing a greater or lesser degree of monitoring.

(c) A person subject to the provisions of this section shall be responsible for the cost of the electronic monitoring. In the event a person required to submit to electronic monitoring as required by the provisions of this section is unable to pay for the electronic monitoring, that person may present an affidavit reflecting the inability to pay for such monitoring to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such monitoring, the court shall issue an order reflecting such findings and forward said order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for each testing.

(d) The assessment required by the provisions of subsection (b) of this section shall be completed not later than thirty days after the supervised person begins serving probation or parole or supervised release. Under no circumstances may a person of whom electronic monitoring has been mandated as a condition of supervision be on a type of monitoring less effective than voice verification with a curfew.

(e) Any person who intentionally alters, tampers with, damages or destroys any electronic monitoring equipment, with the intent to remove the device or impair its effectiveness, is

guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than ten years.

§62-11E-1. Legislative findings and intent.

(1) That a small but extremely dangerous group of sexually violent offenders exist who do not have a mental disease or defect that renders them appropriate for involuntary hospitalization pursuant to chapter twenty-seven of this code, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast, these offenders, known as sexually violent predators, generally have personality disorders and/or mental abnormalities which are largely unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior.

(2) That the likelihood of sexually violent predators engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure is inadequate to address the risk to re-offend because during confinement these predators do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement.

(3) That the prognosis for curing sexually violent predators is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different from the traditional treatment modalities for people appropriate for commitment under chapter twenty-seven of this code.

(4) It is therefore the purpose of this article to establish a public-private task force to identify and develop measures providing for the appropriate treatment of sexually violent predators lasting until they are no longer dangerous to the public. The measures should reflect the need to protect the public, to respect the needs of the victims of sexually violent offenses, and to encourage full, meaningful participation of sexually violent predators in treatment programs.

§62-11E-2. Sexually Violent Predator Management Task Force created; duties.

(a) There is hereby created the "Sexually Violent Predator Management Task Force." The task force shall consist of the following persons:

(1) The Commissioner of the Division of Corrections, or his or her designee;

(2) The Commissioner of the Bureau for Behavioral Health and Health Facilities, or his or her designee;

(3) The Executive Director of the West Virginia Prosecuting Attorney's Institute, or his or her designee;

(4) The Executive Director of Public Defender Services, or his or her designee;

(5) The Director of the Division of Criminal Justice Services, or his or her designee;

(6) The President of the Sex Offender Registration Advisory Board, or his or her designee;

(7) The Superintendent of the West Virginia State Police, or his or her designee; and

(8) Four public members appointed by the Governor with the advice and consent of the Senate as follows:

(i) A forensic psychiatrist with experience evaluating persons charged with sexually violent offenses;

- (ii) A forensic psychologist with experience evaluating persons charged with sexually violent offenses;
 - (iii) A prosecuting attorney with experience prosecuting persons for sexually violent offenses; and
 - (iv) A public defender or private criminal defense attorney: *Provided*, That the person have experience defending persons charged with committing sexually violent offenses.
- (b) The task force also may invite, as it deems necessary, other individuals with certain specialties to join the task force as members, including, but not limited to, probation officers and current or former members of the judiciary in West Virginia. The Commissioner of the Division of Corrections shall chair the task force.
- (c) Each ex officio member of the task force is entitled to be reimbursed by their employing agency for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration. All other expenses incurred by the task force shall be paid by the Division of Corrections.
- (d) It shall be the duty of the task force to develop measures for the appropriate treatment of sexually violent predators, assess resources and circumstances specific to West Virginia, examine constitutional, statutory and regulatory requirements with which such measures must comply, identify the administrative and financial impact of those measures and develop a plan for implementation of the measures by a date certain. In fulfilling those duties, the task force, at a minimum, shall:
- (1) Consult with psychiatrists and psychologists regarding the management of sexually violent predators, including, but not limited to, their diagnosis and treatment;
 - (2) Evaluate current involuntary commitment procedures set forth in chapter twenty-seven of this code and how they may interact with the state's management of sexually violent predators;
 - (3) Survey the mental health resources offered by state agencies, including, but not limited to, current treatment resources for sexually violent predators in all phases of the correctional, probation and parole systems;
 - (4) Assess what, if any, state resources exist for use in the confinement of sexually violent predators;
 - (5) Examine the interaction between criminal penalties for sexually violent offenses and the management of sexually violent predators;
 - (6) Consider other states' approaches to managing sexually violent offenders released after the completion of their criminal sentences;
 - (7) Conduct interviews with relevant personnel inside and outside of state government; and
 - (8) Determine the fiscal impact of any of its recommendations.

§62-11E-3. Schedule; public hearings.

- (a) On or before the first day of July, two thousand seven, the task force shall submit a report setting forth their final findings and recommendations to the Legislature and the Governor.
- (b) In recognition of the importance of public engagement, the task force shall have two public hearings prior to the first day of March, two thousand seven, to solicit input from citizens, mental health professionals, local law-enforcement officials, other stakeholders,

and interested parties about the state's management of sexually violent predators.

§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor, shall be eligible for probation, notwithstanding the provisions of sections eighteen and nineteen, article eleven, chapter sixty-one of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment or brandishing of a firearm shall be ineligible for probation. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm.

(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(A) Shall apply to all applicable offenses occurring on or after the first day of August of that year;

(B) Shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(C) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(D) Shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this section shall apply and be construed without reference to such amendment; and

Insofar as such amendments relate to mandatory sentences without probation, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(d) For the purpose of this section, the term "firearm" shall mean any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means.

(e) In the case of any person who has been found guilty of, or pleaded guilty to, violation of the provisions of section twelve, article eight, chapter sixty-one of this code, the provisions of article eight-c or eight-b of said chapter, or under the provisions of section five, article eight-d of said chapter, such person shall only be eligible for probation after undergoing a physical, mental and psychiatric study and diagnosis which shall include an on-going treatment plan requiring active participation in sexual abuse counseling at a mental health facility or through some other approved program: *Provided*, That nothing disclosed by the person during such study or diagnosis shall be made available to any law- enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless such information disclosed shall indicate the intention or plans of the probationer to do harm to any person, animal, institution or property, in which case such information may be released only to such persons as might be necessary for protection of the said person, animal, institution or property.

Within ninety days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of the provisions of article eight-b, eight-c or sections five and six, article eight-d, chapter sixty-one of this code, or of section fourteen, article two, or of sections twelve and thirteen, article eight, chapter sixty-one of this code, or of a felony violation involving a minor of section six or seven, article eight, chapter sixty-one of this code, or of a similar provision in another jurisdiction shall be required to be registered upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender, send written notice to the State Police of the release of the offender. The notice shall include:

- (1) The full name of the person;
- (2) The address where the person shall reside;
- (3) The person's social security number;
- (4) A recent photograph of the person;
- (5) A brief description of the crime for which the person was convicted;
- (6) Fingerprints; and
- (7) For any person determined to be a sexually violent predator as defined in section two-a, article twelve, chapter fifteen of this code, the notice shall also include:
 - (i) Identifying factors, including physical characteristics;
 - (ii) History of the offense; and
 - (iii) Documentation of any treatment received for the mental abnormality or personality disorder.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant

convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to fifty years: *Provided*, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, of a violation of sections three or seven, article eight-b, chapter sixty-one of this code and sentenced pursuant to section nine-a, article eight-b, chapter sixty-one of this code, shall be no less than ten years: *Provided, however*, That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, as a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: *Provided further*, That, pursuant to the provisions of subsection (g) of this section, a court may modify, terminate or revoke any term of supervised release imposed pursuant to subsection (a) of this section.

(b) Any person required to be on supervised release for a minimum term of ten years or for life pursuant to the provisos of subsection (a) also shall be further prohibited from:

- (1) Establishing a residence or accepting employment within one thousand feet of a school or child care facility or within one thousand feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted;
- (2) Establishing a residence or any other living accommodation in a household in which a child under sixteen resides if the person has been convicted of a sexually violent offense against a child, unless the person is one of the following:
 - (i) The child's parent;
 - (ii) The child's grandparent; or
 - (iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(d) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by the probation office of the sentencing court or by the community corrections program established in said circuit unless jurisdiction is transferred elsewhere by order of the sentencing court.

(e) A defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions

of section nine, article twelve, chapter sixty-one of this code: *Provided*, That any defendant sentenced to a period of supervised release pursuant to this section shall be required to participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court deems such to no longer be appropriate or necessary and makes express findings in support thereof.

Within ninety days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) The sentencing court may, based upon defendant's ability to pay, impose a supervision fee to offset the cost of supervision. Said fee shall not exceed fifty dollars per month. Said fee may be modified periodically based upon the defendant's ability to pay.

(g) *Modification of conditions or revocation.* -- The court may:

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release;

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(h) *Written statement of conditions.* -- The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(i) *Supervised release following revocation.* -- When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (a) of this section, the court may include a requirement that the defendant be placed on a term of supervised release

after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(j) *Delayed revocation.* -- The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h) of this section, a further term of supervised release extends beyond the expiration of the term of adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

§62-12-27. Mandatory prerelease risk assessment of certain sex offenders.

Prior to discharging an inmate convicted of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b or eight-d of said chapter at the expiration of the term of their sentence, the Division of Corrections shall perform an assessment to determine the statistical risk that the inmate will reoffend after being released from the division's custody. Prior to releasing the inmate, the division shall forward the results of the assessment to the inmate's supervising entity.

HB 2329 Effective June 8, 2006

West Virginia Code § 61-11A-4

The Courts may order a defendant to contribute money or hours of service to a local crime victim's assistance or juvenile mediation program which is approved by the circuit judge and is a nonprofit organization governed by a board of directors.

HB 3213 Effective June 9, 2006

Adds new: West Virginia Code § 61-2-16a

Malicious assault, unlawful assault and battery of a driver, conductor, motorman, captain or other person in charge of vehicles used for public are felonies.

HB 4004 Effective June 9, 2006

Adds new: West Virginia Code § 17C-6-7

Prohibits the use of traffic law photo-monitoring devices in West Virginia. However, photographs on non-traffic violations including littering is permitted. This does not prohibit the use of microwave devices otherwise known as radar devices in Class I, II, III and IV cities.

HB 4018 Effective June 8, 2006

Amends: West Virginia Code § 62-11C-2 and 4

The Community Corrections Subcommittee of the Governor's Committee on crime, delinquency and corrections are required to meet quarterly. Funding for community corrections are increased from \$30.00 to \$35.00 from persons on probation and from \$3.00 to \$10.00 from a defendant in any criminal case in municipal, magistrate or circuit court. The new fees are to go into effect July 1, 2006.

HB 4030 Effective June 9, 2006

Adds New: West Virginia Code § 15-2-9

Limits the administration of a voluntary contribution fund or similar benefit package by members of the West Virginia State Police. This legislation authorizes the use of staff time, postage, copying and incidental resources in the administration of a voluntary contribution fund to be used for small contributions to a beneficiary upon the death of a member or employee.

HB 4036 Effective June 9, 2006

Adds new: West Virginia Code § 61-11-8a

Any person who solicits (willful and knowingly instigates or induces) another person to commit a felony crime of violence against a third person is guilty of a felony.

HB 4119 Effective June 9, 2006

Adds New: West Virginia Code § 15-20-1 through 8 ATV Responsibility Act

Every authorized ATV or motorcycle outfitter or licensee is required to mark for identification purposes all equipment and vehicles used in the business, maintain all equipment and vehicles used in the business as intended and recommended by the manufacturer; provide facilities, equipment and services conforming to safety and other requirements established by the Hatfield-McCoy Regional Recreation Authority; provide facilities, equipment and services as advertises or as agreed to by the authorized outfitter or licensee and the participant, provide protective helmets which are size appropriate and which meet the current performance specifications established by the American National Standards Institute; provide all-terrain vehicles or motorcycles that are age and size appropriate as recommended by the manufacturer; make reasonable and prudent efforts to ensure that participants have received safety training required for the use of the Hatfield-McCoy Regional Recreation Area; make certain that every guide offered to participants by the authorized outfitter or licensee has a current standard first aid training certificate and CPR certificate issued by the American Red Cross or its equivalent and ATV safety training through the ATV Safety Institute; employees must carry first aid kits when acting as guides; make known to any participant any dangerous condition as to trail lands, facilities or equipment to be traversed or used which is known by the outfitter or licensee. These authorized outfitter or licensees may not rent or lease an ATV or motorcycle to a person under the age of 18 or allow any owner-operated ATV or motorcycle on any guided tour when operated by any person under the age of 18 without first obtaining a written statement signed by the minor's parent or guardian. The release must assure that the machine follows the criteria for safety and is age appropriate. The minor must understand the rules governing the use of the vehicle within the Hatfield-McCoy Recreation Area. Any minor under the age of 16 will remain under the supervision of and the sight of the parent or guardian at all times.

Riders have to obey all rules or instructions announced by the outfitter or licensee and wear all safety equipment provided by the outfitter or licensee or which might otherwise be required by law.

HB 4283 Effective June 9, 2006

Amends: West Virginia Code § 5A-3-37

Provides a preference to West Virginia veterans in the awarding of state contracts in the competitive bidding process. The state is to give the resident vendor who is a veteran of the armed forces including reserves and National Guard a preference in awarding contracts provided the bid does not exceed by 3.5 percent of the lowest qualified bid from a non-resident vendor and the veteran vendor has made a written claim for preference at the time the bid is submitted.

HB 4307 Effective June 9, 2006

Amends: West Virginia Code § 17A-10-3

Extends the weekend driving privileges of antique motor vehicles and motorcycles. Antique motor vehicles and motorcycles may be used beginning at 4:00 p.m. on Friday's through Sunday.

HB 4355 Effective June 9, 2006

Amends: West Virginia Code § 48-27-403 and 49-5-7 and 8

Permits the temporary detention of a juvenile who is named as a respondent in an emergency domestic violence protective order if that juvenile resides with the petitioner.

HB 4386 Effective June 8, 2006

Adds New: West Virginia Code § 15-2-24

Permits criminal information to be shared among states for non-criminal purposes such as background checks for certain employment. Permits the Superintendent of State Police to oversee the implementation and operation of the compact for the state including creating rules, regulations and procedures related to the compact.

HB 4437 Effective June 6, 2006

Amends: West Virginia Code § 17C-15-26

Permits the use of red flashing warning lights for the West Virginia Department of Agriculture on emergency response vehicles designated by the Commissioner of the agency.

HB 4588 Effective June 9, 2006

Adds new: West Virginia Code 61-2-5a

Any person who knowingly and willfully conceals or attempts to conceal or assists in the concealment of a deceased human body and the death occurred as a result of criminal activity is guilty of a felony. If a person affirmatively brings the concealment of a deceased human body to the attention of law enforcement within 48 hours of the concealment and it is prior to being contacted by law enforcement then that person has a complete defense.

HB 4632 Effective June 9, 2006

Amends: West Virginia Code § 15-5-15

Prevents convicted felons from being employed as, and requires a background check of each person appointed to serve as a homeland security or emergency service personnel and it also requires that each person take an oath stating he/she is not a convicted felon.

HB 4694 Effective June 9, 2006

Amends: West Virginia Code § 49-1-3, 49-6-2, 5 and 5b

Provides specific consideration when the surrounding circumstances of child abuse and neglect indicate that one is a battered parent and insures that support services are made available to the battered parent. A battered parent is one who is not at fault for the abuse or neglect of the child/children and is a victim of domestic violence

HB 4854 Effective June 9, 2006

Amends: West Virginia Code § 62-6B-3

A psychologist does not need to have a doctoral level degree in order to render an opinion regarding testimony from a child.

SB 13 Effective June 6, 2006

West Virginia Code § 7-10-2, 9-6-9 Amended Code, 9-6-9 New Code, 48-27-702

Amended Code, 49-6A-2 Amended Code and 49-6A-2b New code

Permits a humane officer who is investigating animal cruelty and has a reasonable suspicion that a minor, incapacitated or elderly person is a victim of abuse, neglect or has a suspicion of domestic violence should report that suspicion. When dealing with issues of suspected child abuse and or neglect the humane officer can report to the local child protective services agency of the Department of Health and Human Resources. In situations involving suspected abuse or neglect of an incapacitated or elderly person, the officer can report to the local adult protective services agency. In the event there is suspected domestic violence, the officer can report to the State Police. When a law enforcement officer is responding to an alleged incident of domestic violence and he/she has reasonable suspicion that an animal is a victim of cruel or inhumane treatment that that officer is required to report the suspicion to the county humane officer within 24 hours of the response to the alleged incident of domestic violence.

SB 166 Effective June 9, 2006

Amends: West Virginia Code § 62-12-12, 13, 18, 19, 23 and 24 and adds a new Section, West Virginia Code § 62-12-12a

The Chair of the Parole Board shall be appointed by the Governor. The panels of the board will conduct parole interviews, consider parolees for discharge and hold other hearings as authorized.

SB 174 Effective June 8, 2006

West Virginia Code § 15-2-31a and 15-2-37 Amended and § 15-2-52 New section

Requires that each recipient of disability benefits file an annual certified statement of earnings. The Consolidated Retirement Board is required to examine earnings information made available from the State Tax Commissioner. It permits the board to terminate any present benefit approved as a result of false statement or record made in support of benefits. It also prohibits any Member who withdraws contributions from

receiving prior service credit upon re-enlistment unless he/she re-deposits a certain amount of money.

SB 219 Effective June 9, 2006

Amends: West Virginia Code § 17B-1-1 and 17B-2-3a

A level one instruction permit is valid 30 days after the applicant attains the age of 18. Any person under the age of 18 and is the holder of a level one instruction permit or level two intermediate driver's license may not use a wireless communication device while operating a motor vehicle except to call 911. This is a secondary offense.

SB-299 (Passed March 11, 2006 and is effective from passage)

Legislative Rules 149 CSR 5

Data collection for the study of racial profiling will begin January 1, 2007. The original law had an ending date of December 31, 2007. This study will take place over the period of one (1) year. A new motor vehicle stop form will be developed and must be completed by law enforcement officers each time they stop a motor vehicle for a violation. The location of the stop will be identified by patrol area which are clearly defined geographic areas identified by numbers. Training for all law enforcement officers must be provided prior to January 1, 2007. Law enforcement officers will be identified by a unique number however, the identity of any law enforcement officer is to be protected.

SB 473 Effective July 1, 2006

Amends: West Virginia Code § 17C-5-3 Reckless Driving

Any person who causes another person to suffer serious bodily injury shall be confined in jail for not less than ten (10) days or more than six (6) months, fined or both. Serious bodily injury is that which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged impairment of the function of the bodily organ.

SB 481 (Passed March 8, 2006 and is effective from passage)

Amends: West Virginia Code § 48-27-311

A Protective Order issued by a Court of this state served outside the boundaries of this state shall carry the same force and effect as if it was personally served in this state.

SB 484 (Passed March 9, 2006 and is effective from passage)

Amends: West Virginia Code § 62-11C-5

A county may establish a community corrections program to be used prior to the trial as a condition of a bond both in magistrate and circuit courts as well as an alternative sentencing option.

SB 503 Effective July 1, 2006

Amends: West Virginia Code § 15-2-4 and 15-2-5

Provides a pay raise for State Police. Base pay salary increases for uniformed members of the State Police over three (3) years, increases their experience increment pay and permits the superintendent of the State Police to appoint two **additional supervisors**,

from the executive protection unit, to hold the temporary rank of first lieutenant and serve at will and pleasure of the superintendent. The additional supervisors must have served at least two (2) years in the executive protection unit prior to being appointed.

SB 551 Effective June 7, 2006

Amends: West Virginia State Code § 27-1-2, 27-5-2 and 4

Involuntary commitment for addicted persons is restricted to those who are likely to cause harm to themselves or others as a result of their addiction.

SB 558 Effective July 1, 2006

Amends: West Virginia Code § 6-7-2, 6-7-2a, 9A-1-5, 15-2-2, 16-5P-5, 17-2A-3, 18-3-1, 19-1A-5, 20-1-5, 21-1-2, 21A-4-5; 22-1-6, 29-1-1, 29-12-5, 33-2-260-2-9

Provides for salary adjustments for certain appointive state officers including various appointed secretaries, commissioners and directors of state departments.

SB 566 Effective June 9, 2006

Amends: West Virginia Code 14-2A-3 and 19a

The maximum payment for meth lab clean-up is \$5,000.00

SB 728 Effective June 9, 2006

Amended West Virginia Code § 7-1-3cc, 24-6-2, 24-6-5 and 24-6-6b

All applicants for the position of director or supervisor of emergency dispatch facilities are required to be subject to a character and criminal background check. The West Virginia State Police will conduct the background check. Conviction of a felony will preclude any individual from being hired. A current employee who fails to pass the background check will be removed.

SB 791 Effective June 9, 2006

Amends: West Virginia Code 60A-2-212 and 60A-10-7 and 8

The offenses and penalties for prohibited acts relating to controlled substances do not apply to ephedrine, pseudoephedrine and phenylpropanolamine. The offenses and penalties for prohibited acts which are set forth in Article 10 of Chapter 60A are applicable. Beginning January 1, 2007 the reporting required in Section 8 shall be electronic transmission to the Board of Pharmacy no more than once a week.